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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANKLIN ALAN FARIAS,

Defendant and Appellant.

H042301

(Santa Clara County

Super. Ct. No. C1486106)

Defendant Franklin Alan Farias was convicted of multiple drug offenses based on incriminating text messages on his cell phone and drugs and indicia of drug sales found in several containers in his garage. He contends the trial court erred in denying his motion to suppress the evidence found on the phone and in the containers. As we will explain, we conclude that (1) a final, published California Court of Appeal decision is binding precedent for purposes of the good-faith reliance exception to the Fourth Amendment exclusionary rule; and (2) in the case of a warrantless search of a closed container in a shared residence based on the consent of one occupant, the consenting party must have, or appear to have, a right to access the container. Although we find no error in the denial of defendant's motion as to the evidence found on his cell phone, the evidence found in certain containers in the garage should have been suppressed. We will therefore reverse the judgment.

I. BACKGROUND

We take the underlying facts from the evidence presented at the preliminary examination. Detective Tim Ferrara of the Fremont Police Department and a team of

several other police officers were conducting surveillance of defendant's home in San Jose, after a confidential informant reported drugs were being sold there. They observed defendant drive around the neighborhood and engage people in several exchanges that the officers suspected were drug transactions. After the last such exchange, Detective Andrew Holt stopped defendant's car a few blocks away from his home. As he spoke with defendant through the driver's side window, Detective Holt saw \$40–\$60 in cash, two cell phones, and a pill bottle with a loosely attached prescription label, all of which he believed to be consistent with the sale of illegal drugs.

Detective Holt ordered defendant out of the car, searched him, and found over \$2,000 cash in his pocket. A search of the car then revealed a bottle of hydrocodone pills and a glass pipe used for smoking methamphetamine. Defendant was placed under arrest. Detective Holt examined one of the two cell phones found in the car and read a text message conversation that appeared on the screen. The text messages discussed a meeting to exchange drugs for a videogame console.

After defendant was arrested, Detective Holt asked him for permission to search his home. Defendant refused. Detective Ferrara and two other officers then returned to defendant's house and encountered his wife outside. Detective Ferrara knew from a previous records search that both she and defendant lived in the house, and he asked her for consent to search the premises. Defendant's wife told Detective Ferrara that the officers were "free to search anywhere" in the house. She also signed a consent form authorizing law enforcement to search the premises and take "any letters, papers, materials or other property which they may desire." She then directed the officers to the garage, describing it as the place where defendant spent most of his time and where he often did things that were illegal. She pointed out specific locations in the garage where she believed defendant kept "illegal contraband." Following her direction, Detective Ferrara looked underneath a shelf on a garage worktable and found a red plastic toolbox and a green metal box designed to store ammunition. Inside the metal ammunition box,

he found large quantities of various pills (opiates, tranquilizers, and Methadone). Inside the toolbox was a plastic bag containing methamphetamine. Detective Ferrara also looked inside a wooden cigar box, a fender compartment on defendant's motorcycle, and a glass jar in a cabinet. In the cigar box he found plastic bags commonly used for drug packaging. The glass jar contained marijuana, and the fender compartment contained opiate tablets. On a shelf in the garage, officers found a digital scale, as well as a list of handwritten names and numbers that appeared to reflect dollar amounts.

Defendant was charged by complaint with transporting a controlled substance (Health & Saf. Code, § 11352, subd. (a); count one); four counts of possessing a controlled substance for sale (Health & Saf. Code, § 11351; counts two through five); one count of possessing methamphetamine for sale (Health & Saf. Code, § 11378; count six); two counts of possessing a controlled substance for sale (Health & Saf. Code, § 11375, subd. (b)(1); counts seven and eight); maintaining a place for unlawful activities involving controlled substances (Health & Saf. Code, § 11366; count nine); and violating a protective order (Pen. Code, § 273.6, subd. (a); count ten).¹

At the preliminary examination, defendant moved to suppress evidence under Penal Code section 1538.5 on the ground that the warrantless search of his cellular phone and garage violated the Fourth Amendment to the United States Constitution. The trial court denied the motion, concluding that defendant's wife had authority to consent to a search of the entire residence and therefore the seizure of the items in the garage was valid. The court also found that the search of the cellular phone was lawful under the law as it existed at the time of the search.²

¹ The conduct giving rise to the Penal Code section 273.6, subdivision (a) charge occurred in the days after the search of defendant's residence and is not relevant to the issues raised by this appeal.

² *Riley v. California* (2014) 573 U.S. 373 (*Riley*), holding that the Fourth Amendment prohibits warrantless searches of cellphones, was not decided until after the search in this case.

Defendant pleaded no contest to counts one through eight, and to count ten. He was sentenced to five years eight months to be served in county jail (two years in custody, followed by mandatory supervision for the remainder of the term under Penal Code section 1170, subdivision (h)).

II. DISCUSSION

Under Penal Code section 1538.5, a defendant may move to suppress evidence obtained by law enforcement from a warrantless search that is unreasonable. We apply Federal constitutional standards to determine the reasonableness of a search. (*People v. Schmitz* (2012) 55 Cal.4th 909, 916.) “A warrantless search is unreasonable under the Fourth Amendment unless it is conducted pursuant to one of the few narrowly drawn exceptions to the constitutional requirement of a warrant.” (*Ibid.*) The burden is on the prosecution to show based on competent evidence that a warrantless search was lawful. (*People v. Johnson* (2006) 38 Cal.4th 717, 733.)

In reviewing a trial court’s ruling on a motion to suppress evidence, we defer to the trial court’s express and implied factual findings so long as they are supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) We then exercise our independent judgment in determining whether the facts as found by the trial court satisfy the prosecution’s burden to show a warrantless search was reasonable under the Fourth Amendment. (*Glaser, supra*, at p. 362.)

A. EVIDENCE FROM THE CELL PHONE NEED NOT BE SUPPRESSED

Defendant contends the warrantless search of the cell phone found in his car violated the Fourth Amendment according to *Riley*. In *Riley*, the U.S. Supreme Court held that the Fourth Amendment exception for searches incident to arrest does not encompass warrantless searches of modern cell phones. (*Riley, supra*, 573 U.S. 373 at p. 386.) The Attorney General does not dispute that *Riley* now renders the search of defendant’s cell phone unconstitutional. But *Riley* was decided shortly *after* the search in this case occurred. Accordingly, the Attorney General argues that the evidence found on

the cell phone is admissible—the constitutional violation notwithstanding—because pre-*Riley* appellate precedent allowed the search of a cell phone incident to arrest and therefore the good-faith exception to the exclusionary rule applies.

The exclusionary rule is a judicially created deterrent sanction that bars the prosecution from introducing evidence obtained in violation of the Fourth Amendment. (*Davis v. United States* (2011) 564 U.S. 229, 231–232.) The rule does not apply when law enforcement conducts a search “in objectively reasonable reliance on binding appellate precedent,” even if later appellate authority deems the type of search unconstitutional. (*Id.* at p. 232.) The rationale for this good-faith exception to the exclusionary rule is that no deterrent effect is gained by excluding evidence obtained by law enforcement agents who acted with a good-faith belief that their conduct was lawful. (*Id.* at p. 238.)

At the time defendant’s cell phone was searched, California Supreme Court precedent provided that a warrantless search of a cell phone incident to arrest was permissible under the Fourth Amendment. (*People v. Diaz* (2011) 51 Cal.4th 84 (*Diaz*) [overruled by *Riley*, *supra*, 573 U.S. 373 at p. 386].) Defendant argues that *Diaz* does not provide a basis for the good-faith exception to apply here, because *Diaz* involved the search of a cell phone found on the arrestee’s person, while the cell phone searched in this case was found in a vehicle. However, in *People v. Nottoli* (2011) 199 Cal.App.4th 531 (*Nottoli*), this court rejected that very argument, finding “no principled reason to distinguish between a cell phone found on an arrestee’s person during a search incident to arrest and a cell phone found in a passenger compartment during a vehicular search incident to arrest.” (*Id.* at p. 558.)

Defendant does not attempt to distinguish *Nottoli*, since its holding permitting the search of a cell phone found in a vehicle incident to arrest (pre-*Riley*) is squarely on point here. Rather, he argues that *Nottoli* does not constitute “binding appellate precedent” for purposes of the good-faith exception to the exclusionary rule because it is a decision of

an intermediate state appellate court. To determine whether the cell phone evidence should have been suppressed, we must therefore decide whether a published California Court of Appeal decision is “binding appellate precedent” as that term was used by the Supreme Court in *Diaz*.

We conclude that our decision in *Nottoli* was binding precedent at the time of the search in this case, and law enforcement was entitled to rely on it. The Eighth Circuit Court of Appeals has described *Davis*’ reference to “binding appellate precedent” as requiring officers to strictly comply with precedent “governing the jurisdiction in which they are acting,” and we agree with that interpretation. (*United States v. Barraza-Maldonado* (8th Cir. 2013) 732 F.3d 865, 867.)³ It is well established that published decisions of the California Court of Appeal are binding throughout the state. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455 (*Auto Equity Sales, Inc.*) [“Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state.”].) A published California Court of Appeal decision is therefore properly considered binding precedent when determining whether police officers acted in good faith reliance on existing law. (See, e.g., *People v. Mackey* (2015) 233 Cal.App.4th 32, 96 [finding *People v. Zichwic* (2001) 94 Cal.App.4th 944, 953–956 to be “binding California precedent upon which the police could reasonably rely.”].)

Nowhere in the *Davis* decision does the U. S. Supreme Court suggest an otherwise binding intermediate state appellate court decision would not be considered binding appellate precedent for purposes of the good-faith exception to the exclusionary rule. Indeed, the opinion acknowledges that “most” Fourth Amendment precedent reviewed by the U.S. Supreme Court will come from the highest court in a state or from federal circuit

³ But see *United States v. Aguiar* (2d Cir. 2013) 737 F.3d 251, 261, defining the term in a more narrow and federally oriented fashion, as “precedent of this Circuit and the [U. S.] Supreme Court.”

courts, necessarily implying that other courts can also be the source of binding precedent. (*Davis, supra*, 564 U.S. at p. 247 [*“In most instances, as in this case, the precedent sought to be challenged will be a decision of a federal court of appeals or state supreme court.”* (Italics added)]).)

Further, the stated rationale behind the good-faith exception is that no legitimate purpose is served by excluding evidence obtained by a law enforcement officer who acts in a manner that is specifically authorized by an existing precedential court decision. (*Davis, supra*, 564 U.S. at 241.) That logic applies equally when the precedent in question comes from a California Court of Appeal.

Defendant worries that “expansion of the *Davis* rule to intermediate state appellate decisions” will result in unintended negative consequences—such as a single Court of Appeal decision having a lasting statewide impact “even if the California Supreme Court and the relevant federal appellate courts had not yet spoken.” But we are not expanding the *Davis* rule; no court has expressly held that state court appellate decisions do not constitute binding appellate precedent, and, as discussed, *Davis* itself appears to contemplate that they do. Further, the consequences described by defendant are neither unintended nor undesirable. Absent a grant of review from the California Supreme Court or the United States Supreme Court, published decisions of the California Courts of Appeal do have a lasting statewide impact, which is entirely by design. (*Auto Equity Sales, Inc., supra*, 57 Cal.2d at p. 455.)

We note that the Ninth Circuit Court of Appeals has twice declined to decide the question of whether intermediate state appellate court decisions are “binding appellate precedent” under *Davis*. (See *United States v. Lara* (9th Cir. 2016) 815 F.3d 605 (*Lara*) and *United States v. Lustig* (9th Cir. 2016) 830 F.3d 1075 (*Lustig*).) In *Lara*, the court commented in dictum that when there is a decisional conflict between a state appellate court and a federal Circuit Court of Appeals, neither decision should be considered binding appellate precedent. (*Lara, supra*, 815 F.3d at p. 614.) And in *Lustig*, the court

cited Justice Sotomayor's concurring opinion in *Davis* to suggest that some level of conflicting decisions among state appellate courts might make it unreasonable for an officer to rely on any one of those decisions as binding authority. (*Lusting, supra*, 830 F.3d at p. 1083, fn. 6 ["A sufficient body of district court or state appellate court decisions could perhaps create enough uncertainty about the scope of prior appellate precedent to make it unreasonable to rely on that precedent. See *Davis*, 564 U.S. at 250–51, (Sotomayor, J., concurring in the judgment) (arguing that when the 'law in the area' is 'unsettled,' law enforcement officials should 'err on the side of constitutional behavior.')]".)

Defendant similarly argues that the potential for a split between California Court of Appeal and Federal Circuit Court decisions on a Fourth Amendment issue dictates that state intermediate authority not be considered binding under *Davis*. But whether a California Court of Appeal decision is binding appellate precedent for purposes of the good-faith exception when it conflicts with decisions from a federal court (or another Court of Appeal) is a question not presented in this case. Defendant does not point to any authority in existence at the time of the search conflicting with *Nottoli's* determination that a cell phone found in a vehicle could be searched incident to arrest. He cites *United States v. Camou* (9th Cir. 2014) 773 F.3d 932, 941–943, where the Ninth Circuit decided a warrant is required to search a cell phone found in a vehicle. But that is a post-*Riley* case decided after the instant search. He also cites a case from the Ohio Supreme Court, *State v. Smith* (Ohio 2009) 920 N.E.2d 949, 954, but a case from another state court does not apply to law enforcement officers acting within California and therefore does not conflict with *Nottoli*.

The search of defendant's cell phone violated the Fourth Amendment under the United States Supreme Court decision in *Riley*. But since the search pre-dated *Riley* and was at the time authorized by binding appellate precedent, the good-faith exception to the

exclusionary rule applies, and the trial court correctly denied the motion to suppress the evidence found on the cell phone.

B. EVIDENCE FROM SOME CONTAINERS IN THE GARAGE SHOULD HAVE BEEN SUPPRESSED

Defendant contends it was unreasonable under the Fourth Amendment for the police to search certain containers in the garage (the ammunition box, toolbox, cigar box, fender compartment, and glass jar). He argues that his wife's consent to search the house was ineffective to allow law enforcement to search the containers. We agree, because consent from one occupant of a shared residence—even a spouse—extends to a closed container only if the facts demonstrate the consenting occupant has mutual use of or shared access to the container.

1. Defendant's Argument Was Not Forfeited

As a threshold matter, we address the Attorney General's assertion that defendant forfeited his challenge to the container search by not making an adequately specific argument in the trial court. Generally speaking, out of fairness to the trial court and the opposing party, a litigant may not raise a new theory on appeal unless it involves the application of law to undisputed facts. (*Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1316.) The issue is more complicated in the context of a Penal Code section 1538.5 motion involving a warrantless search because, although the defendant is the moving party, it is the prosecution who has the burden of presenting evidence to justify the search. That procedural structure governs how specific the arguments must be in the trial court to avoid forfeiture of a suppression theory on appeal.

In *People v. Williams* (1999) 20 Cal.4th 119 (*Williams*), the California Supreme Court held that a defendant's initial obligation as the moving party is simply to assert the absence of a warrant; however, once the prosecution has offered a justification for the search, a defendant must present any arguments as to why that justification is inadequate in order to preserve those arguments for appeal. (*Id.* at p. 130.) The scope of reviewable

issues is limited to those that were raised in argument on the motion. (*Id.* at p. 136.) Here, defendant made the initial assertion that the search of his garage was conducted without a warrant, and the justification offered by the prosecution was that the search was allowed because defendant's wife gave consent to search the premises. In response, defense counsel argued that defendant's wife did not have the authority to consent to the search, and specifically referenced the containers: "And so my argument based on the search of the home including the garage, the motorcycle, the personal containers of Mr. Farias where he was clearly objecting to that search regardless of whether or not he was present is another inquiry. Whether or not [his wife] had the consent to—I mean had the authority to give consent to Detective Ferrara is really the main inquiry of the court." Considering that the theory defendant raises on appeal is the authority of his wife to consent to the container search, and counsel argued in the trial court that authority to consent to the search—including the containers—was the "main inquiry of the court," we would be hard pressed to find a forfeiture under *Williams*.

The Attorney General relies on *People v. Oldham* (2000) 81 Cal.App.4th 1, in which a defendant's argument that his father had no authority to consent to the search of a bedroom was found not to have preserved a challenge to the search of containers found in the bedroom. But the defendant in *Oldham* never claimed sole ownership of the containers at the hearing on the suppression motion, nor did he point out any inadequacies in the prosecution's consent justification. (*Id.* at p. 14 ["Without such claim [of ownership] or without pointing out any inadequacies in the prosecution's justification for Father's consent to search the specific items found in the master bedroom suite, neither the prosecutor nor the court was put on notice that additional justification for the scope of the search into any particular item was required."].) In contrast, defendant here did claim sole ownership of the containers at issue and also argued that the search of his "personal containers" exceeded his wife's authority to consent.

The Attorney General also asserts there was no evidence presented in the trial court concerning whether defendant's wife used or accessed the containers. But evidence was presented on that issue. A police officer testified that the wife pointed out the containers as being where defendant kept property belonging to him that was illegal. Defense counsel elicited on cross-examination that the officer did not find any of the wife's possessions in the garage and that she told officers defendant spent most of his time in the area of the containers. These facts are all relevant to determining whether it was objectively reasonable for the officers to believe the containers were mutually used by defendant and his wife.

We also note that the record likely would have been more developed on the issue of the wife's right of access to the containers, but she refused to testify at the hearing, citing the spousal privilege (Evid. Code, § 970). We will not penalize defendant for his wife's assertion of a privilege by finding forfeiture based on inadequate evidence when it is the prosecution who had the burden of proof. The evidence and arguments presented to the trial court were sufficient to preserve the issue of the propriety of the container search for review.

2. Defendant's Private Containers Were Outside the Scope of His Wife's Consent to the Search of the Residence and Garage

The Fourth Amendment to the United States Constitution provides, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The essential purpose of the Fourth Amendment is to shield the citizen from unwarranted intrusions into privacy. (*Jones v. United States* (1958) 357 U.S. 493, 498.) Searches by law enforcement conducted without a warrant first being issued by a judicial officer are " 'per se unreasonable.' " (*Coolidge v. New Hampshire* (1971) 403 U.S. 443, 454.) Certain warrantless searches are allowed under specifically established exceptions, but those exceptions are " 'jealously and carefully drawn.' " (*Ibid.*)

One exception to the warrant requirement is consent. It is reasonable (and therefore permissible) under the Fourth Amendment for law enforcement to search a residence after obtaining the voluntary consent of a person who either lives there or has common authority over the premises. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 181.) If a person giving consent does not actually have the authority to do so, the search will be upheld so long as the person had apparent authority; that is, if it was objectively reasonable under the circumstances to believe the consenting party possessed the requisite common authority over the premises. (*Id.* at p. 186.)

When more than one person occupies a residence, consent from one of the occupants is sufficient to allow a search. (*United States v. Matlock* (1974) 415 U.S. 164, 170.) However, if one occupant consents and a co-occupant expressly refuses, law enforcement may not conduct a search without first obtaining a warrant. (*Georgia v. Randolph* (2006) 547 U.S. 103, 106.) This so even where the occupants are married—a wife may not consent to a search of the marital home over the objection of her husband, and vice versa. (*Ibid.*) Notably, the objecting party must be physically present on the premises; otherwise, law enforcement may still search under consent from one occupant, even if the absent occupant had previously refused. (*Fernandez v. California* (2014) 134 S.Ct. 1126, 1130 (*Fernandez*).)

Applying the *Fernandez* rule here, law enforcement was entitled to search the garage after obtaining the wife’s consent to search the entire house, even though defendant had refused to give that very consent a short time earlier standing two blocks away. But that does not resolve the ultimate question in this appeal: whether the wife’s consent made it permissible for law enforcement to search the containers in the garage.

As this court has recognized, “[t]he validity of a third party’s consent to search is founded upon the nature and extent of that party’s access to and control over the property.” (*People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1199.) In this context, consent to search a residence is distinct from consent to search containers

within that residence. The California Supreme Court recognized in *People v. Jenkins* (2000) 22 Cal.4th 900, 974 that “... at least two questions are presented when the state seeks to justify a warrantless search by relying upon the consent of a third party who is the occupant of the premises searched: whether the third party had authority to consent to the search, and whether the scope of the consent given included the object or container that was searched.” The logic supporting the container distinction has been aptly described by the Seventh Circuit Court of Appeals in *United States v. Rodriguez* (7th Cir. 1989) 888 F.2d 519, 523, where the court hypothesized that an airline might consent to a search of its baggage handling facility, but that would not authorize a search of all the suitcases there.

The rule that an occupant of a shared residence does not necessarily have authority to consent to a search of every container on the premises has long been applied even when the occupants are married. In *People v. Carter* (1957) 48 Cal.2d 737, the California Supreme Court noted that—at least at the time—“[t]he effect of a wife's consent to the search or seizure of her husband's property is the subject of sharp disagreement in other jurisdictions.” (*Id.* at p. 745.) It framed the issue as calling for a “determination of whether the wife's relation to her husband and his property is such that there is no invasion of his privacy if she consents.” (*Id.* at p. 746.) The court concluded that whether consent from one spouse to search a residence extends to particular property within the house depends on the degree of control the consenting spouse has over the property: “When the usual amicable relations exist between husband and wife, and the property seized is of a kind over which the wife normally exercises as much control as the husband, it is reasonable to conclude that she is in a position to consent to a search and seizure of property in their home.” (*Ibid.* [citations omitted].)

Thirteen years later, in *People v. Terry* (1970) 2 Cal.3d 362 (disapproved on unrelated grounds by *People v. Carpenter* (1997) 15 Cal.4th 312, 381), in upholding the search of a residence based on consent from the defendant’s estranged wife, the court

observed that the search may not have been valid had the seized item been in a container belonging to the defendant: “There is no evidence that the murder weapon was in a sealed box or other container belonging to Terry, which Mrs. Terry might not have had authority to permit to be searched.” (*People v. Terry, supra*, at p. 392.)

We glean from this authority the principle that a person’s reasonable expectation of privacy in a closed container found in a residence survives marriage, at least for purposes of a Fourth Amendment analysis. The fact of a marital relationship, standing alone, does not make one spouse’s consent to search a residence effective as to all containers found inside. Of course, the fact that parties are married is relevant for law enforcement to consider in determining whether it is reasonable to believe that a consenting party has mutual use of or shared access to property found in a residence. (See, e.g., *Pennington v. State* (Okla. 1995) 913 P.2d 1356, 1358 [“The officers knew that Tracy Pennington was the wife of appellant and that she resided at the location where the search was conducted. There were reasonable grounds to believe that Tracy, as the wife of appellant, would have common access to the bag.”].) But marriage is not dispositive. Whether or not the occupants are married, to justify a search of a closed container within a common residence, the overall circumstances must indicate the consenting party has at least mutual use of or shared access to the containers.

The Attorney General asserts that *People v. Clark* (1993) 5 Cal.4th 950, 979 (disapproved on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22), unconditionally “permits the search of objects found in a common area.” *Clark* is readily distinguishable because it involved the search of a vehicle in which the defendant had no ownership interest. There is a lesser expectation of privacy for property left in a vehicle than for property left in a home, and even less when the vehicle belongs to someone else. Further, *Clark* does not stand for the blanket proposition urged by the Attorney General, but only that “objects left in an area of common use or control *may* be within the scope of

the consent given by a third party for a search of the common area.” (*Clark, supra*, 5 Cal.4th at p. 979. [Italics added].)

The majority of courts that have considered the question recognize that common authority over a residence does not automatically confer the right to consent to search all belongings within the residence.⁴ Applying this rule is necessarily a fact-intensive exercise.

Cases finding a search invalid include *State v. Evans, supra*, 45 Haw. at p. 634 [wife’s consent to search did not extend to husband’s cufflink case in a bedroom drawer]; *Krise v. State, supra*, 746 N.E.2d at p. 970 [male co-occupant’s consent to search did not extend to female occupant’s purse located in shared bathroom]; *United States v. Davis, supra*, 332 F.3d at p. 1170 [roommate’s consent to search did not extend to belongings located in a bedroom used by other occupant]; *Marganet v. State, supra*, 927 So.2d at p. 61 [consent from female joint occupant of a hotel room did not extend to male occupant’s suitcase and shaving case]; *United States v. Peyton, supra*, 745 F.3d at pp. 553–554 [grandmother’s consent to search apartment did not extend to shoebox near bed in living room where grandson slept]; *United States v. Turner, supra*, 23 F.Supp.3d at p. 311 [girlfriend’s consent to search apartment did not extend to boyfriend’s backpack where she indicated he kept his guns].

Cases finding a search valid include *People v. Ford, supra*, 83 Ill.App.3d at p. 63 [evidence showed mutual use of basement and joint access to toolbox such that wife’s

⁴ See, e.g., *State v. Evans* (1962) 45 Haw. 622, 634; *People v. Ford* (1980) 83 Ill. App.3d 57, 63; *United States v. Salinas-Cano* (10th Cir. 1992) 959 F.2d 861, 865; *Krise v. State* (Ind. 2001) 746 N.E.2d 957, 970; *United States v. Davis* (9th Cir. 2003) 332 F.3d 1163, 1170; *Marganet v. State* (Fla. 2006) 927 So.2d 52, 61; *Glenn v. Commonwealth* (2008) 275 Va. 123, 135–136; *United States v. Taylor* (6th Cir. 2010) 600 F.3d 678, 682–683; *United States v. Peyton* (D.C. Cir. 2014) 745 F.3d 546, 553–554; *United States v. Turner* (S.D.N.Y. 2014) 23 F.Supp.3d 290, 311. But see *State v. Gallespie* (1977) 18 Wash.App.313, 316–317 [declining to adopt an “exclusive use” limitation on search of container in residence].

consent allowed search of husband's tools in basement]; *Glenn v. Commonwealth, supra*, 275 Va. at pp. 135–136 [grandfather's consent to search home where he lived with grandson extended to grandson's backpack because police had no reason to believe the backpack did not belong to consenting party]; *United States v. Melgar* (7th Cir. 2000) 227 F.3d 1038, 1041–1042 [consent from joint occupant of hotel room extended to other occupant's purse because police had no reason to know purse did not belong to consenting party].

In the end, whether one occupant's consent to search extends to containers within a shared residence depends largely on the reasonable expectation of privacy the non-consenting occupant has in the containers. (See *Katz v. United States* (1967) 389 U.S. 347, 351 [the Fourth Amendment protects people, not places; a violation occurs when the government violates a person's reasonable expectation of privacy].) When a person shares the use of a container with someone, such as a spouse or roommate, the expectation of privacy in the container is diminished.

Applying these principles to the facts here, in order to justify the search of defendant's containers the prosecution was required to show that defendant's wife had, or reasonably appeared to have, mutual use of or a right to access the containers in the garage. The prosecution did not meet that burden. We acknowledge the trial court's finding that the police were aware the parties were married and that both of them resided at the house. But, as we have discussed, neither marriage nor shared occupancy is sufficient for a warrantless search of any container on the premises based on the consent of one occupant. Rather, the totality of the circumstances must indicate mutual use of the container.

The circumstances known to the officers did not suggest mutual use. To the contrary, defendant's wife described the containers as belonging to defendant and as being used by him to store his illegal contraband: she pointed officers “into the direction, the area that Mr. Farias commonly does things that she described as illegal.” She then

directed officers to the areas where “she said she knew illegal contraband to be.” The reasonable inference to be drawn from her statements is that defendant was involved in illegal activity she had nothing to do with. The wife’s generalized knowledge of “illegal contraband” being in the containers does not provide a sufficient indication that she had a right of access to them, at least not when she also clearly indicated the contents did not belong to her. It is telling that the record does not suggest police ever concluded there was probable cause to arrest defendant’s wife for possessing the illegal contraband—the available facts indicated the contraband did not belong to her, notwithstanding her marriage to and cohabitation with defendant. It follows that the facts did not establish she had either actual or apparent authority to consent to a search of the containers.

Defendant’s wife had common authority over and the corresponding ability to consent to a search of the garage generally, but her authority did not extend to containers within the garage that she specifically indicated belonged to defendant. (See *United States v. Taylor, supra*, 600 F.3d at pp. 682–683 [“Our conclusion is further reinforced by the district court’s factual finding that ‘the police would likely not have opened the closed shoebox if they believed it belonged to (the consenting party). Rather, they opened the shoebox precisely because they believed it likely belonged to (the defendant.)’ ”].) Significantly, besides being aware that the consenting party was defendant’s wife and they both lived at the house, the officers were given additional information suggesting the containers were associated solely with defendant. (See *United States v. Peyton, supra*, 745 F.3d at p. 553 [“Standing alone, these circumstances might suggest that the shoebox was not a private space and that it was reasonable for the police to believe that Hick’s authority over the living room also encompassed the shoebox. But these were *not* the only circumstances the police were aware of.”].)

We emphasize that the wife’s statements about defendant storing illegal items in the garage containers does not mean law enforcement was prevented from searching the containers—but they could not do so based solely on her consent. Indeed, although the

wife's statements that defendant used the containers for contraband made it less likely she shared access, her statements made it *more* likely the officers would be able to obtain a search warrant. We do not perceive any particular exigency in this situation, since defendant had been arrested and transported to jail. Circumstances presenting a concern about a destruction of evidence may justify a warrantless search without the need to invoke the consent exception. (*Kentucky v. King* (2011) 563 U.S. 452, 469 [the exigent circumstances rule allows police to enter a dwelling without a warrant to prevent imminent destruction of evidence].) But here, there was adequate time to obtain a search warrant, and probable cause to support one.

Our conclusion does not require that all of the evidence found in the garage be suppressed. The seized items not found in containers were lawfully obtained under the wife's consent to search the garage, which she had authority to give as a co-occupant of the house, despite defendant's off premises objection. (*Fernandez v. California, supra*, 134 S.Ct. at p. 1130.) Additionally, the marijuana found in the glass jar in a cabinet was lawfully obtained because although it was in a closed container, the testimony at the hearing indicates that the jar was transparent.⁵ The wife's shared access to the garage supports a reasonable inference of access to the garage cabinets. And a container such as a glass jar that allows its contents to be viewed without opening it does not carry the same expectation of privacy as a container that hides its contents. (*Horton v. California* (1990) 496 U.S. 128, 132 ["If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy."].) But the metal ammunition box, plastic toolbox, wooden cigar box, and fender compartment each command an

⁵ The officer who found the jar described it as a "glass jar," and did not say he needed to open the jar to see what it contained. He described removing the contents only for the purpose of weighing the marijuana. We infer from this testimony that the jar was made of clear glass and its contents were visible from the outside.

expectation of privacy under the Fourth Amendment such that the evidence found in those containers must be suppressed.

Given our disposition, we do not reach defendant's argument that the trial court erroneously added penalty assessments to laboratory and drug program fees imposed as part of the sentence.

III. DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with the following instructions: the trial court is directed to vacate its order denying defendant's suppression motion and enter a new order granting the motion as to the evidence found in the ammunition box, toolbox, cigar box, and fender compartment. Defendant shall be permitted to withdraw his plea.

Grover, J.

I CONCUR:

Elia, Acting P. J.

Mihara, J., dissenting.

I respectfully dissent from my colleagues' holding that Detective Tim Ferrara did not have a reasonable basis for his belief that Michelle Farias had the authority to consent to a search of containers in the garage of the home she shared with her husband, defendant Franklin Alan Farias. First of all, I do not believe that we should reach this issue because defendant forfeited it below. But even if it were appropriate to address this issue, I would find that the evidence supports the superior court's apparent authority finding and its denial of defendant's suppression motion.

I. Evidence Presented At The Hearing

Ferrara testified at the preliminary examination that he was involved in an investigation of defendant for narcotics sales. During this investigation he learned that defendant lived at 261 Bieber Drive in San Jose with Michelle Farias. Although Ferrara had not met or spoken to Michelle Farias, he knew who she was because he had done "background research" and looked at "DMV photos and databases."

On June 12, 2014, Ferrara saw defendant leave the house at 261 Bieber Drive, get into a white Nissan Altima, and drive to another address. Ferrara knew that the Nissan Altima was registered to Michelle Farias. Ferrara and other officers followed defendant and saw him engage in several apparent narcotics transactions. One of the officers pulled defendant over for a seatbelt violation. This officer asked defendant for consent to search his home, but defendant did not grant consent.

Ferrara, who was not aware that defendant had refused to consent to a search of the house, returned to 261 Bieber Drive, which was near but not within sight of the traffic stop, "to set up surveillance in anticipation of writing a search warrant." After he and other officers arrived at 261 Bieber Drive, Michelle Farias left the house and "walked out in front of the house." She walked "out in the middle of the street like she

was looking around” Ferrara got out of his car and spoke with her “[i]n the street.” She asked him if he “was a Detective Ferrara.” Ferrara had no idea how she knew his name. Michelle Farias told Ferrara that she lived at the house and was defendant’s wife. Ferrara did not ask her for identification. She “said that [Ferrara] was free to search anywhere I would like.”

Michelle Farias filled out and signed a written “CONSENT TO SEARCH.” This written consent authorized the police “to conduct a complete search of my premises . . . [and] to take from my premises and/or vehicle any letters, papers, materials or other property which they may desire.” She “pointed [Ferrara] into the direction, the area that Mr. Farias most commonly does things that she described as illegal.” That area was “the garage.” Michelle Farias specifically pointed to a green metal box under a “work table” in the garage where “she said she knew illegal contraband to be.”

Ferrara looked inside the green metal box and found “numerous bottles of prescription medication and stuff of that sort.” On a “cabinet shelf” in the garage, Ferrara found a “wooden cigar box.” The cigar box contained plastic baggies. He found a digital scale on a cabinet shelf. The “fender compartment of Farias’s motorcycle that was in the garage” contained a pill bottle. A baggie of methamphetamine was inside a “red plastic tool box” that was sharing a shelf with the green metal box under the work table. Ferrara did not discover any of Michelle Farias’s personal belongings in the garage.

II. Procedural Background

Defendant filed a suppression motion in advance of the preliminary examination. The prosecution responded by contending that the search of defendant’s home was proper because his wife had consented to the search. It relied on *Fernandez v. California* (2014) 571 U.S. 292 (*Fernandez*).

Defendant responded by contending that the police “did not have sufficient information to corroborate that Michelle Farias had authority to consent” to the search of the home when they relied on her consent. (Capitalization omitted.) Defendant made no mention of the containers. None of the cases he cited turned on whether a closed container was properly searched. (*United States v. Matlock* (1974) 415 U.S. 164, 166-167 [money found in diaper bag; issue was whether third party had authority to consent to search of the bedroom in which the bag was found]; *Illinois v. Rodriguez* (1990) 497 U.S. 177, 180 [drugs found in apartment in plain view; issue was whether third party had authority to consent to search of room]; *United States v. Groves* (7th Cir. 2008) 530 F.3d 506, 508-509 [bullets found in drawer in nightstand; issue was whether defendant’s girlfriend had authority to consent to search of apartment; only mention of containers was in connection with unaddressed issue about scope of consent]; *United States v. Cos* (10th Cir. 2007) 498 F.3d 1115, 1117-1118 [gun found under bed in apartment; issue was whether defendant’s friend had authority to consent to search of apartment].)

Michelle Farias invoked the spousal privilege and refused to testify at the preliminary examination. Defendant’s trial counsel made only a brief argument on the consent issue at the hearing, which focused on “the information known to” Ferrara at the time of the search. She argued that “he does not have sufficient information to confirm in his mind that Michelle Farias had the authority to give consent to search the home, let alone the garage. There was ample testimony, and I think it’s uncontroverted, that Mr. Farias occupied the garage. If not solely, it was the majority of the time occupied by Mr. Farias. [¶] Detective Ferrara testified that he did not see any kind of corroborating information other than the driver’s license of Michelle Farias that listed the 261 Bieber address as her address. [Ferrara] did not do anything to confirm or dispel that she actually had the authority to give consent to search that home.” “And so my argument based on the search of the home including the garage,

the motorcycle, the personal containers of Mr. Farias where he was clearly objecting to that search regardless of whether or not he was present is another inquiry. Whether or not Michelle Farias had the . . . authority to give consent to Detective Ferrara is really the main inquiry of the Court. [¶] . . . Ferrara did not have information sufficient to justify his beliefs that the consent was valid.”

The prosecution responded: “It seems she had access to the garage the same as the rest of the home.” The defense responded: “The factors known to Detective Ferrara based on precedent dealing with the same issue are just insufficient. [¶] Coming out of the house, saying that she has authority to give consent and accepting that at face value without any corroborate indicia is insufficient.”

The court denied the motion. “Now the way the Court sees it regarding her consent, she comes out of the house, he had information that she lived there. They both lived there actually. And she comes out of the direction of the house. She obviously says she lives there, and she signs a consent. Which I guess a person wouldn’t sign that unless they assumed they have the authority to consent. [¶] So I am not sure what further investigation the officer has to do at that point other than accept this person’s word that they live there. So I do think that he had the proper consent to search. And if she lives there, I would assume that she has consent to the entire residence. And since they live there as, I believe as husband and wife.”

After the information was filed, defendant filed a Penal Code section 995 motion that was also focused solely on Michelle Farias’s authority to consent to a search of the garage, not her authority to consent to a search of the containers, and he cited the same cases he had cited in his suppression motion, none of which concerned the propriety of searching containers. His written motion contended that the police “simply did not have enough information to conclude that the woman [the detective] suspected to be Michelle Farias had authority to consent to a search *of the garage* of 261 Bieber Drive.” (Italics added.) The prosecutor’s response again relied on

Fernandez and did not address the propriety of the search of the containers. The defense did not file a reply to the prosecutor's opposition and made no argument concerning the containers at the hearing on the motion.

The court rejected defendant's contention that his suppression motion should have been granted. "I do think the officers had all they needed for consent from Michelle Farias." The court noted that the officer had previously seen a photo of Michelle Farias, that he recognized her, that defendant's car was registered to her, that they shared the same last name, and that she said she was defendant's wife and lived in this house with him. "[T]he officers can rely on third party consent where it's a situation of joint authority . . . when it's apparent even. They don't have to have actual. They can even have apparent. I think here they did have actual"

III. Forfeiture

The Attorney General contends that defendant forfeited the contention he makes on appeal—that Michelle Farias lacked the authority to consent to a search of *closed containers*—by failing to make it below. Defendant argues that he adequately preserved this issue and alternatively that his trial counsel was prejudicially deficient in failing to preserve it.

"[A] defendant must state the grounds for the motion with sufficient particularity to give notice to the prosecution of the sort of evidence it will need to present in response." (*People v. Williams* (1999) 20 Cal.4th 119, 123 (*Williams*).) In *Williams*, an officer stopped the defendant's vehicle for a traffic violation and discovered that the defendant's license had expired. The officer began doing an inventory of the vehicle's contents in preparation for towing the vehicle. During this inventory, the officer opened three bags that were sitting on the front seat of the vehicle and discovered narcotics inside the bags. (*Id.* at p. 123.) The defendant filed a suppression motion in which he argued that the detention was unlawful and that the

search was not justified as an inventory search because the police lacked a policy regarding inventory searches. (*Id.* at p. 124.) His motion was denied. On appeal, he contended that the police inventory policy was inadequate because it did not address the opening of closed containers during an inventory search. (*Id.* at p. 125.) The Court of Appeal held that he had failed to preserve that issue. (*Ibid.*)

On review, the California Supreme Court described what was necessary for a defendant to preserve such an issue. “[O]nce the prosecution has offered a justification for a warrantless search or seizure, defendants must present any arguments as to why that justification is inadequate.” (*Williams, supra*, 20 Cal.4th at p. 130.) “[I]f defendants detect a critical gap in the prosecution’s proof or a flaw in its legal analysis, they must object on that basis to admission of the evidence or risk forfeiting the issue on appeal.” (*Ibid.*) “Moreover, in specifying the inadequacy of the prosecution’s justifications, defendants do not have to help the prosecution step-by-step to make its case. The degree of specificity that is appropriate will depend on the legal issue the defendant is raising and the surrounding circumstances. Defendants need only be specific enough to give the prosecution and the court reasonable notice. Defendants cannot, however, lay a trap for the prosecution by remaining completely silent until the appeal about issues the prosecution may have overlooked.” (*Id.* at pp. 130-131.) “The determinative inquiry in all cases is whether the party opposing the motion had fair notice of the moving party’s argument and fair opportunity to present responsive evidence.” (*Id.* at p. 135.)

The California Supreme Court found that the *Williams* defendant had adequately preserved his appellate issue concerning closed containers. Although the “main thrust” of the defendant’s motion below had been his challenge to the detention, his motion “also cited and quoted the portion of *Wells* that requires a specific policy or practice governing *the opening of closed containers*.” (*Williams, supra*, 20 Cal.4th at p. 127, italics added.) The court concluded that by doing so his motion adequately

preserved the issue. “[H]is trial court brief adequately put the prosecution on notice that it had to prove a policy *specifically governing the opening of closed containers*. [¶] First, the brief expressly asserted that ‘the Tuolumne County Sheriff’s Office has no written policy or procedure for inventory searches.’ Arguably, that assertion alone was sufficient to raise the closed-container issue.” (*Id.* at p. 137, italics added.) Second, he “cited and quoted” a case holding that *an inventory policy must address “the opening of closed containers”* (*Ibid.*) “[B]y raising the question whether the inventory search was pursuant to a preexisting policy and by quoting from *Wells*, defendant adequately put the prosecution on notice as to the *specifics* of the policy it needed to prove.” (*Id.* at p. 138, italics added.)

Williams is readily distinguishable. Unlike the defendant in *Williams*, defendant did not cite or quote in his written pleadings or his oral argument below any case that specifically addressed whether a third party had the authority to consent to a search of *closed containers*. His motion was addressed solely to Michelle Farias’s authority to consent to a search of *the garage*. While the *Williams* defendant’s claim that the inventory search was not pursuant to a preexisting policy put the prosecution on notice that the search could be justified only if it comported with such a policy, including a policy concerning closed containers, defendant’s claim that Michelle Farias lacked the authority to consent to a search of the garage did not put the prosecution on notice that her authority to consent to a search of individual closed containers located in the garage required a separate justification.

People v. Oldham (2000) 81 Cal.App.4th 1 (*Oldham*) is more closely on point. In *Oldham*, the defendant was contacted outside his apartment and refused to consent to a search of his apartment. While the deputies were there, the defendant’s father “stepped out of the apartment” The father told the deputies that he lived in the apartment and that it was his apartment, and he consented to a search of the apartment. (*Id.* at p. 4.) In the bedroom that the defendant claimed as his, the officers found

narcotics inside of several closed containers. (*Id.* at pp. 4-5.) The defendant's suppression motion asserted that the father's consent was limited to areas of the apartment that he shared with the defendant and did not extend to the defendant's bedroom. (*Id.* at p. 5.) He claimed that the deputies could not have reasonably believed that his father had authority to consent to a search of the defendant's bedroom and property. (*Ibid.*)

On appeal, the defendant asserted that even if his father had authority to consent to a search of his bedroom, his father lacked authority to consent to a search of the closed containers. (*Oldham, supra*, 81 Cal.App.4th at pp. 8-9.) He claimed that he had preserved this issue because, in his view, "any challenge of a consent search necessarily encompasses a challenge to the scope of the consent, including the issue of the consent to search closed containers." (*Id.* at p. 14.) The Court of Appeal, applying *Williams*, disagreed. (*Oldham*, at p. 9.) It pointed out that the defendant "did not raise any distinct legal theory as to why the search of any of the closed containers was unreasonable" in his pleadings or argument in the trial court. (*Id.* at p. 14.) Thus, "neither the prosecutor nor the court was put on notice that additional justification for the scope of the search into any particular item was required." (*Ibid.*)

The same is true here. Defendant's pleadings and argument below did not put the prosecutor or the court on notice that there was a need for additional justification for the search of individual closed containers found in the garage. As in *Oldham*, defendant's motion below was directed at Michelle Farias's authority to consent to a search of the home and particularly the garage, but it did not in any way contemplate the need for a separate analysis of her authority as to the closed containers found in the garage. In my view, under *Oldham*, defendant failed to preserve this issue for appellate review.

I would also find no merit in defendant's unelaborated claim that his trial counsel was prejudicially deficient in failing to preserve this issue. Defendant cannot

demonstrate prejudice. We can only speculate as to what evidence the prosecution might have produced at the hearing if it had been on notice that a search of the closed containers required separate justification. Perhaps it could have produced evidence that Michelle Farias used the motorcycle or that it was registered to her. Such evidence would have provided additional support for a finding that she had actual authority to consent to a search of the motorcycle. The prosecution also might have produced additional evidence concerning the containers, such as Michelle Farias's fingerprints on them, that would have provided additional support for a finding that Michelle Farias shared access to them. On this record, defendant's claim of ineffective assistance cannot succeed.

IV. No Basis For Suppression

In any event, defendant's suppression motion lacked merit. "The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) "[T]he power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power, and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (*People v. Lawler* (1973) 9 Cal.3d 156, 160.)

"[I]t is settled that 'the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared.' . . . [¶] . . . [C]ourts have determined in various circumstances that third parties were authorized to consent to a search of luggage,

bags, or other personal belongings of a defendant.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 976-977 (*Jenkins*).) “The question before us is whether the ‘facts available to the officer at the moment . . . [would] ‘warrant a man of reasonable caution in the belief’ that the consenting party had authority’ over the property as to which consent is given.” (*Id.* at p. 977.)

In *Jenkins*, the California Supreme Court rejected the suggestion “that authority to consent to a search depends in part upon a showing that the person consenting enjoyed not only access to and control over, but also mutual use of the property searched.” (*Jenkins, supra*, 22 Cal.4th at p. 978.) “We do not believe, however, that the United States Supreme Court intended to require that in every circumstance in which a third party occupant of premises consents to the search of *personal property* of another located on the premises, authority to consent to search depends upon the third party’s actual mutual *use* of the personal property, in addition to access to and control over the property. As we have explained, ‘objects left in an area of common use or control may be within the scope of the consent given by a third party for a search of the common area.’” (*Id.* at p. 979.)

“The validity of a third party’s consent to search is founded upon the nature and extent of that party’s access to and control over the property. . . . [¶] The law also permits a search based upon consent by a person with apparent authority where the officers conducting the search reasonably believe that the person is empowered to give that consent.” (*People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1199.) “[W]here the facts available to the officer at the time of the search would lead a reasonable person to believe ‘that the consenting party had authority over the premises’ [citation], the search is valid even if it ultimately turns out that no actual authority to consent existed.” (*Id.* at p. 1205.)

Here, the facts available to Ferrara at the time of the search supported an objectively reasonable belief that Michelle Farias had the authority to consent to a

search of the closed containers in the garage. First, she and defendant were married, and they shared both the house and the Nissan Altima that defendant was driving. Second, Michelle Farias not only had access to everything in the garage, but also knew what the closed containers contained, which supported a reasonable inference that she had mutual access to their contents.¹ Third, although Ferrara did not come across Michelle Farias's personal belongings in the garage, there was no indication when the search commenced that the garage was secured in any fashion or that any of the closed containers were stored in any manner so as to make their contents inaccessible to her. Under these circumstances, Ferrara could reasonably conclude that Michelle Farias had the authority to consent to a search of the closed containers.

None of the cases relied upon by my colleagues to support their contrary conclusion is on point. In *People v. Carter* (1957) 48 Cal.2d 737 (*Carter*), the issue was whether the wife had actually given consent to a search of her husband's truck, not whether she had the authority to do so, and the dicta in the opinion appears to have been the product of an era in which a wife's property rights were considered subordinate to her husband's. (*Id.* at pp. 745-747.) The same is true of *People v. Terry* (1970) 2 Cal.3d 362 (*Terry*), disapproved on a different point in *People v. Carpenter* (1997) 15 Cal.4th 312, 381-382. In *Terry*, the court was considering an ineffective assistance claim and mused that "[t]here is no evidence that the murder weapon was in a sealed box or other container belonging to Terry, which Mrs. Terry might not have had authority to permit to be searched. (Cf *People v. Cruz* [(1964)] 61 Cal.2d 861, 867; *People v. Murillo* [(1966)] 241 Cal.App.2d 173.)" (*Terry*, at p. 392.)

¹ My colleagues improperly draw an inference that Michelle Farias had nothing to do with the garage area based on her statement that defendant did illegal things there and that illegal contraband could be found there. (Maj. opn., *ante*, at pp. 16-17.) We are bound to defer to every reasonable inference that the superior court could have drawn in favor of its ruling. The court was not bound to draw this inference, so we may not draw it.

The cases cited in *Terry* are equally inapposite. In *People v. Cruz* (1964) 61 Cal.2d 861 (*Cruz*), the person who consented to a search of various containers did not have authority over the contents of the apartment because she was merely a guest there. (*Id.* at p. 864.) *People v. Murillo* (1966) 241 Cal.App.2d 173 (*Murillo*), which relied on *Cruz*, concerned the validity of a consent by a woman to a search of a man's *locked* suitcase that was found in an apartment where the two of them were *guests*. (*Murillo*, at pp. 175-178.)

The other cases cited by my colleagues on this issue are also distinguishable. *State v. Evans* (1962) 45 Haw. 622 (*Evans*) was a Hawaii case that relied on *Carter*. It held that the wife did not have the authority to consent to a search of a cuff link case in a bedroom bureau drawer because wives have “no . . . right” to consent to a search of a husband's “personal effects” (*Evans*, at p. 631.) *United States v. Rodriguez* (7th Cir. 1989) 888 F.2d 519 concerned the authority of a wife *who was separated from her husband* to consent to a search of closed containers *in his post-separation living quarters* after he had moved out of their home. (*Id.* at pp. 522-525.) It did not concern the authority of a wife to consent to a search of containers in the home she shared with her husband.

In *United States v. Taylor* (6th Cir. 2010) 600 F.3d 678, a divided court held that a woman who had allowed the defendant to store some of his belongings in her apartment lacked the authority to consent to a search of a closed container amongst his property. (*Id.* at pp. 678-682.) In *United States v. Peyton* (D.C. Cir. 2014) 745 F.3d 546, another divided court held that the defendant's elderly great-great-grandmother lacked apparent authority to consent to a search of a closed container that was amongst the defendant's belongings in the room in which he slept in their shared apartment. (*Id.* at pp. 549, 553-555.)

My colleagues' reliance on these inapposite cases does nothing to support their conclusion. None of these cases involved a wife consenting to a search of containers

in living quarters she shared with her husband. The evidence before the superior court in this case provided more than adequate support for its conclusion that Ferrara had a reasonable basis for his belief that Michelle Farias had the authority to consent to a search of those containers: she lived in the house with her husband, had unimpeded access to the garage and its containers, and was knowledgeable about the contents of those containers.

V. Conclusion

I would affirm the judgment.

Mihara, J.

People v. Farias
H042301